Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554

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In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	CS Docket No. 95-61

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") is an association representing approximately 500 small and rural independent local exchanges carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America. Approximately 170 of NTCA's members have authority by waiver or under the rural exemption in 47 C.F.R § 63.58 to provide CATV services in their wireline service areas.

The Commission has indicated that it will rely on publically available sources to compile the 1995 Competition Report. Nonetheless, it requests comments to aid its preparation of this annual report it must make to Congress by mandate of the Cable Television Consumer Protection and Competition Act of 1992. NTCA submits these comments to the Notice of Inquiry (NOI) to request that the Commission call attention in its 1995 Report to issues that relate uniquely to competition in the provision of services to the rural areas where NTCA members provide telecommunications services. Specifically, NTCA urges the Commission to recommend statutory changes that clarify that telcos may provide in-region "cable services" in connection with the repeal of the cross-ownership restriction in the Communications Act, 47 U.S.C. § 533(b), and the rewriting of Section 214 of the Act to make it clear that telephone companies do not need Commission authorization to provide these non-common carrier traditional cable services to subscribers in their wireline service areas.

DISCUSSION

I. THE COMMISSION SHOULD RECOMMEND STATUTORY CHANGES THAT CLARIFY THAT TELCOS MAY PROVIDE IN-REGION "CABLE SERVICES" NOT REGULATED BY TITLE II OF THE COMMUNICATIONS ACT.

The NOI assumes that the video dialtone delivery model is the optimum one for promoting competition to cable and that it is a viable model for the entire country and every LEC. NTCA recommends that the Commission abandon this unsupported assumption in the absence of a record demonstrating that a two-wire policy is the appropriate vehicle to promote competition in rural areas or of a history of experience with successful video dialtone operations. Insofar as small LECs are concerned, the video dialtone option is no option. That option therefore contributes nothing to competition in rural areas. The Commission's attempt to force the video dialtone option on LECs has not resulted in increased competition in rural areas or anywhere.

While there is no evidence of video dialtone successes in rural areas, there is a history demonstrating that telcos can and have provided traditional cable in rural areas they serve. The

Commission can further competition in these rural areas now by adopting regulatory measures that will allow LECs to provide cable service to their subscribers under the same set of rules that apply to CATV operators. The Commission has recommended repeal of the cross-ownership ban in a prior report.[1] It has also indicated it will not enforce the ban in cases where the courts have found the ban unconstitutional.[2] Despite these actions, Commission regulations, practices and procedures are still stifling rather than promoting competition.[3]

The Commission is well aware that circumstances are markedly changed since 1984 with cable now available to 96% of all homes. NOI at ¶ 12. Under those changed circumstances, competition is

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[1] Telephone Co-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, Second Report & Order, Recommendation to Congress, 7 FCC Rcd 5781, (1992).

[2] Public Notice, DA 95-722, Commission Announces Enforcement Policy Regarding Telephone Company Ownership of Cable Television Systems (April 3, 1995).

[3] The Bentleyville Telephone Co. Petition for Waiver of Sections 63.54 and 63.55 and Application for Authorization under Section 214, File No. W-P-C-6817 (Bentleyville Application) illustrates how complex and now outdated Commission procedures defeat telephone company efforts to provide competitive cable services to their subscribers. Bentleyville filed its waiver and Section 214 application on April 29, 1992. The incumbent cable operator vigorously opposed the application and waiver. The Commission granted the waiver and application three years later (on May 17, 1995) after Bentleyville obtained court relief from the ban (as a member of one or more of the associations obtaining an injunction in United States Tel. Ass'n. v. United States, Civ. Action No. 1:94CV01961 (D.C.D.C. Feb. 14, 1995). Now, despite the injunction and the Commission's announcement that it will not enforce the ban against companies that obtained court relief, the incumbent cable operator has sought a stay of the May 17, 1995, grant. See, June 16, 1995, Request for Stay and application for Review in (Bentleyville Application).

not promoted by Commission efforts to force an unproven video dialtone model on all telcos. Further, Commission waiver procedures and Section 214 application requirements do not promote competition but have become unreasonable entry barriers instead of procedures that protect the public interest.

Now is the time for the Commission to recommend changes to create viable competition, remove barriers, and eliminate or simplify regulatory procedures that hamper LEC deployment of competitive cable facilities.[4] The Commission should again recommend removal of the cross-ownership ban. In this report, however, it should indicate that its recommendation is not limited to permitting telcos to provide in-region video programming solely under a video dialtone model but should leave telcos free to provide either video dialtone services or traditional cable services.

The Commission's authority to mandate video dialtone also raises constitutional questions under the 1st and 5th Amendments of the United States Constitution.[5] These constitutional concerns should not be ignored or skirted in the Report, particularly in light of the questionable benefits of mandating a

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[4] The Commission should also recommend measures to assure that the public will benefit from policies that permit system sales in rural areas. These sales have the potential to remove inefficiencies and improve the delivery of services in rural areas or other areas with market conditions that cannot sustain a two-wire policy.

[5] See, NTCA Comments in In the Matter of Telephone Company-Cable Television Cross-Ownership Rules Sections 63.54-63.58, CC Docket No. 87-266, filed March 21, 1995.

policy that requires implementation with a yet to be perfected technology that is but one of many ways to deliver video programming.

II. THE COMMISSION SHOULD RECOMMEND REVISION OF SECTION 214 TO MAKE IT CLEAR THAT TELCOS NEED NOT OBTAIN CERTIFICATES FOR THE CONSTRUCTION, OPERATION OR ACQUISITION OF FACILITIES TO PROVIDE "CABLE SERVICE" TO THEIR SUBSCRIBERS ON A NON COMMON CARRIER BASIS.

The NOI makes reference to the ongoing proceedings to consider the application of Title II and Title VI of the Act to telcos providing video programming to their telephone subscribers. NOI at ¶ 50. NTCA filed extensive comments in the Fourth Further Notice of Proposed Rulemaking referred to in the NOI and will not repeat but incorporates those comments by reference.

The crux of NTCA's position is that the Commission should no longer interpret Section 214 of the Act to require it to issue certificates to LECs that provide Title VI cable services for which they obtain franchises from municipalities. In view of the Commission's belief that it is required to interpret the statue this way, NTCA urges the Commission to include a recommendation for revision of Section 214 to make it clear that LECS do not need certificates to provide Title VI cable services in their telephone service areas. The Commission should also indicate that it will repeal 47 C.F.R. § 63.09, the rule requiring LECs to obtain Section 214 authority to provide in-region cable services.

CONCLUSION

In light of the above, NTCA urges the Commission to recommend repeal of the cross-ownership ban and revision of Section 214 of the Act to make it clear that LECs do not need Commission authorization to provide in-region cable services regulated under Title VI. Congressional action on these items will go a long way to promote the goal of competition while at the same time reducing regulatory burdens and procedures that no longer serve a purpose.

Respectfully submitted,

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June 29, 1995

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CS Docket No. 95-61 was served on this 29th day of June 1995, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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